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Weigh Impeachment In an Illegal War

By Don Edwards

WASHINGTON — Do we have any means to stop the President from waging an illegal war? On July 28, the House voted 228 to 195 to stop the invasion of Nicaragua by a mercenary army hired by the Central Intelligence Agency. President Reagan's response was, in effect, "Try and stop me." Congress has not yet had recourse to what undoubtedly is its most effective check on the President — the possibility of impeachment.

Only once in history has Congress sought to hold a President responsible for conducting an illegal war. On July 30, 1974, as a part of impeachment proceedings, the House Judiciary Committee considered Article IV, charging Richard M. Nixon had conducted a secret and illegal war against the neutral nation of Cambodia.

Article IV lost, 26 to 12, but the vote should not be viewed as an important precedent that an illegal Presidential war is not impeachable. Why not? Because one of the chief reasons given for rejecting Article IV was that the War Powers Act made the question moot. Who knows what the verdict would have been had there been no War Powers Act or if, as now, the heart of the act, the legislative veto, had been declared unconstitutional?

More than anything else, our Founding Fathers feared that the Commander in Chief would abuse his position to make unwanted war. As Thomas Jefferson put it, to check "the dog of war" it was necessary to take the war-making power out of the hands of a single person, the executive, and give it to Congress, where a majority vote — arrived at after debate and deliberation — would be required. This provision was included in Article I of the Constitution — part of a larger constitutional package of safeguards against executive abuse.

As for impeachment, it had been included in the proposals before the Constitutional Convention from its beginning. A specific proposal making the executive removable from office on conviction for "malpractice or neglect of duty" was unanimously adopted even before it was decided that the executive would be a single person. James Madison argued that provisions for impeachment were "indispensable" to defend the country against "the incapacity, negligence or perfidy of the chief magistrate." Benjamin Franklin said that the Con-

stitution should provide for the "regular punishment of the executive when his misconduct should deserve it and for his honorable acquittal when he should be unjustly accused."

In Nicaragua, as in Korea, Lebanon, the Bay of Pigs, the Dominican Republic, Vietnam and Cambodia, we find ourselves involved in a war solely because of Presidential action.

The Supreme Court has effectively destroyed the War Powers Act as a Congressional check on illegal Presidential wars. Pundits are saying that Congress must find a new way to play a part in war-making decisions — must strengthen its oversight and rely more heavily on the power of the purse. I agree with these cream-puff remedies but suggest emphatically that what is more important is that Congress comply with all the provisions of the safeguarding package that our Founders provided in the Constitution for keeping a bridle on the chief executive, of which the provision for impeachment is an essential part. Is it responsible for Congress to use all of the safeguards except the one the Founders considered most important?

The truth is that when the decision is whether to wage an undeclared war, Presidents can do as they please. The Senate and House Intelligence Committees and the Congressional military committees will be told something about it, usually after the fact and only when public hysteria has reached a level where criticism will be stigmatized as un-American. A few members of Congress will complain in unnoticed speeches. The big newspapers will mention the actions "with some concern." A majority of the public will support the President, chiefly because the war has already begun and the "enemy" has been identified by the President as a serious threat to our nation.

So, what are we to do? I suggest a conservative return to the remedy suggested in the Constitution.

The 1984 general election campaign will provide an opportunity to debate the issue: Each candidate for Congress should be asked to promise that if the President violates his oath of office by unilaterally going to war against a country that has not attacked us, he will be called to account by a bill of impeachment. The election offers a chance, perhaps our last, to restate, redefine and limit the war-powers of the President according to the Constitution. If we do not, all future Presidents will be able to claim immunity for unlawful conduct of foreign affairs. We have a responsibility to draw this line in the nuclear age.

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